

Manmatha Nath Dutta Vs. Sm. Saibalini Debi W/O Abinash Chandra Banerjee and ors.

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Court : Kolkata

Decided On : Jul-30-1942

Reported in : AIR1943Cal356

Appellant : Manmatha Nath Dutta

Respondent : Sm. Saibalini Debi W/O Abinash Chandra Banerjee and ors.

Judgement :

1. The facts which are not in dispute in this appeal are these: Patni taluk lot ghea is under Touzi No. 11 of the Burdwan Collectorate of which the Maharaja of Burdwan is the proprietor. It was sold under the Patni Regulations in 1932. At this sale, the plaintiff's vendor purchased the patni taluk. The chowkidari chakran lands within lot ghea were resumed in the year 1898-99. After this resumption, these lands were transferred to the Maharaja of Burdwan under the Village Chowkidari Act. The Maharaja was in possession of these lands till 1916. The patnidars of lot ghea entered into possession of these lands in 1917 and remained in possession till 1929 without executing any fresh lease in favour of the Maharaja. In the year 1930, the Maharaja granted a patni lease of these chakran lands to the patnidars of lot ghea. The material portion of this patni lease is this:

If in future the patni right in the said lot ghea be transferred or extinguished for default in the payment of arrears of rent, the patni right in the chowkidari chakran

lands along with the original patni will pass to the purchaser or will be extinguished.

2. The ehowkidari chakran lands were sold under the Patni Regulations and were purchased by defendant 4 in 1931. Defendant 4 is in possession of these chowkidari chakran lands since his purchase. The plaintiff purchased patni taluk lot ghea from the purchaser of the patni taluk lot ghea under the Patni Regulations. She did not succeed in obtaining possession of the chowkidari chakran lands within lot ghea. She there, fore raised the present suit for possession of these chowkidari chakran lands. In *Ranjit Singh v. Kalidasi Debi* ('17) 4 A.I.R. 1917 P.C. 8 their Lordships of the Judicial Committee said:

In their Lordships' opinion not only does not the Act (the Village Chowkidari Act) recognise the existing' title of the zemindar to the lands resumed (under the Village Chowkidari Act) but the estate taken by the zemindar under the order of transfer (under Section 50, Village Chowkidari Act) is in confirmation and by way of continuance of his existing estate and when the zemindar...has entered into contract? affecting his existing estate the rights of third parties under these contracts are preserved.

3. It cannot be therefore disputed that the patnidars of lot ghea became patnidars of the disputed resumed lands even before the patni lease of the resumed lands executed in their favour in 1930 by the Maharaja. The contention of Mr. Sen for the appellants is that the plaintiff cannot claim any right to the disputed resumed lands as the right to the lands of the patnidars, for whose default the patni lot ghea was sold in 1932 was extinguished either by adverse possession of the zemindars or by relinquishment in favour of the zemindar. The first appellate Court after consideration of the evidence in the case came to the conclusion that the zemindar did not acquire any right to the chakran lands by adverse possession. This finding of the first appellate Court has not been re-versed by Henderson J. The facts found by the first appellate Court are also not sufficient to show that the patnidars' right to these chowkidari chakran lands was extinguished by adverse possession of the zemindar. Whether the patnidars relinquished their right to these chowkidari chakran lands in favour of the zemindar is a question of fact. It was not

raised before the trial Court. It was not raised before the first appellate Court. It was also not raised before Henderson J. There are no materials on the record of the present case from which it can be said that the patnidars relinquished their right to these chowkidari chakran lands in favour of the t zemindar.

4. Mr. Sen also contended that even if the defaulting patnidar had the right to these chowkidari chakran lands, the plaintiff's vendor, having purchased only the patni lot, was not entitled to get possession of the chowki-dari chakran lands within the said lot. It would appear from the sale certificate granted under the Patni Regulations to the plaintiff's vendor that the entire patni taluk lot ghea was sold and purchased by the plaintiff's vendor. Much reliance was placed by the learned advocate for the appellant upon the fact that in the sale proclamation as well as, in the sale certificate the rent that was mentioned was the rent of the patni taluk lot ghea and that the rent of the patni comprising the chowkidari chakran lands was not mentioned. In other words, the contention is that reading the description of the properties sold along with the rent payable for them, the reasonable construction of the sale certificate is that the lands of the patni taluk lot ghea excluding the resumed lands were sold and purchased by the plaintiff's vendor. But Mr. Sen conceded that in view of the decision of the Judicial Committee in *Ranjit Singh v. Kalidasi Debi* ('17) 4 A.I.R. 1917 P.C. 8 the person in whom a patni devolves either by succession or by transfer was entitled to possession of all chowkidari chakran lands comprised within the said patni. This being the position, even if the construction put by Mr. Sen on the sale certificate granted to the plaintiff's vendor under the Patni Regulations be accepted, the plaintiff's claim for possession of the disputed lands cannot be resisted by the appellant.

5. The plaintiff's case further is by virtue of a stipulation in the clause of the patni lease of resumed lands in the year 1930 which has been quoted above the patni right in the plaintiff's resumed lands passed to her vendor. The substance of this clause is that the patni of the chowkidari chakran lands is to be treated as an accessory to the original patni. The patnidars entered into possession of the resumed lands in 1917 without entering into any engagement to pay any additional rent for these lands. It may be noted here that the decision of the Judicial Committee in *Ranjit Singh v. Kalidasi Debi* ('17) 4 A.I.R. 1917 P.C. 8 was given in

January 1917. The patnidars continued to be in possession of these chowkidari lands till 1929, but as they had been enjoying these lands without payment of any additional rent, the Maharaja of Burdwan apparently granted this patta to the patnidars in 1930 and the patnidars agreed to pay a certain amount as additional rent for these resumed lands. The preamble of this patta would go to indicate that the chowkidari chakran lands are included in patai taluk lot ghea. It also recites that the chowkidari chakran lands were settled with the lessees of the patta as they represented themselves to be the patnidars of lot ghea. The preamble of the lease indicates that the zemindars were recognising the right of the patnidars under the law, to get settlement of these chowkidari chakran lands on payment of additional rent to her. The clause on which the plaintiff relies simply states the legal position clearly. In this view of the matter the question as to whether this clause, though valid under Sections 28 and 31, T.P. Act, is or is not enforceable in view of the provisions of Section 8 of the Patni Regulations does not arise in the present case. For the reasons given above we are of opinion that Henderson J. was right in holding that the plaintiff is entitled to recover possession of the disputed chowkidari chakran lands from the appellant. The appeal accordingly fails and is dismissed with costs.